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ABSTRACT

Provided are guidelines for physical education and recreation personnel regarding liability insurance. It is noted that recent trends toward including handicapped persons in community recreation, sports, and regular physical education programs have raised concerns among involved personnel. Brief sections cover the following topics: definition of liability insurance and an explanation of what it does, practicalities of program coverage, choosing an insurance company, review of risks for which the company may look (with a listing of companies known to insure programs involving handicapped participants), a description of group insurance plans, and insurance for volunteers. (IM)

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TOPICAL INFORMATION SHEET NO. 3

# LIABILITY INSURANCE QUESTIONS AND ANSWERS FOR PHYSICAL EDUCATION AND RECREATION PERSONNEL

AAHPER/IRUC
1201 16th Street, NW
Washington, D.C. 20036
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Public and private agencies providing recreational services and sports programs, as well as schools that offer physical education and athletics, are acutely aware that they must accept the risk of having damage suits brought against them if an individual is injured while participating in a program they sponsor. Employees, too, must accept a similar risk of having personal damage suits brought against them if an individual under their supervision is injured and negligence proved; and a lawsuit may be brought against agency/city/county with an employee named as co-defendant. Claim settlements awarded by courts across the United States in recent years have tended to favor plaintiffs (injured parties). For these reasons, both personal and program liability insurance are a necessity.

Recent trends toward including impaired, disabled, and handicapped individuals of all ages in community recreation, sports, and regular physical education programs have raised additional concerns on the parts of physical education and recreation personnel:

- Are handicapped individuals considered as higher insurance risks than nonhandicapped individuals, making insurance difficult and expensive to obtain?
- Should liability insurance be increased if handicapped participants are enrolled in a program?
- Can personnel and programs get insurance at all if so-called high risk activities--i.e., horseback riding, whitewater canoeing, downhill skiing--are part of the program?
- Where do personnel find insurance companies to insure them and their programs?

This brief report has been compiled to answer or provide resources for answering such questions.

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## Liability Insurance--What It Is And What It Does

Liability is essentially a legal responsibility to perform services in specific ways, and a susceptibility to lawsuit if negligent performance of those services results in injury to others or to their property. Liability insurance protects an individual or agency against claims of personal injury, property damage, or property loss when it can be proved that there is a legal liability

on the part of the agency or individual for the injury or property damage/ loss. This may be contrasted with accident insurance, which is not concerned with liability or fault, only that an injury has occurred under conditions covered by the policy.

When any questions of liability arise, negligence must always be proved. Elements of negligence include:

-- employee's conduct resulted in harm to another

-- employee did not fulfill his/her responsibility for the safety of the person harmed

-- there was a relatively close causal relationship between conduct and resultant harm

-- the person harmed was not at fault

-- the person harmed suffered actual loss or damage

Liability is not usually imposed on an administrator when an employee's negligence results in injury to a program participant. However, an administrator most assuredly puts him/herself in a position of liability if he/she employs an incompetent person who causes an injury. The administrator might also be held liable if he/she tells an employee to carry out tasks that cause injury, knowing that injury might have resulted from the order, or if he/she does not take steps to correct a condition that might cause an injury.

In certain situations governmental immunity offers protection against liability claims. Governmental functions are generally held to be those performed by a state or subdivision of the state that are essential for protection of the state and for the general welfare of the population. For example, public education, indigent care, law enforcement, fire protection, and public health regulation are governmental functions. Proprietary functions, on the other hand, are those that municipalities perform, not for people of the state but for a city and its residents. Public utilities, trash collection, street maintenance are all considered to be proprietary functions. Immunity is attached to governmental functions, but not so with proprietary functions.

In recent years court decisions have gone both ways regarding liability of public recreation agencies. Illinois, Wisconsin, and New Jersey have all had cases in which city recreation services were considered as proprietary functions and therefore exempt from governmental immunity. In many instances, if fees are charged for some profit, an agency will be looked upon as of a proprietary nature. Courts in most states agree that a school district is not liable in damages for injury to person or property, but school functions involving fees and charges may tend to increase liability of a school district. Despite the status of a recreation, sports, or physical education program, it is extremely important to realize that an employee of a school district or public recreation department can still be sued, even if the agency has governmental immunity.

## The Practicalities of Liability Insurance

A survey of recreation departments, public agencies, and insurance companies was undertaken by AAHPER/IRUC to determine exactly what the status of liability insurance for programs involving impaired, disabled, and handicapped participants is and what various agencies are doing about liability insurance coverage.

PROGRAM COVERAGE. City and county recreation departments responding to the survey indicated that their recreation programs for handicapped individuals were covered under the regular recreation program policy, which was actually the same liability policy covering all city/county operations. Two private recreation agencies with programs primarily serving disabled people had to obtain liability policies specifically for their recreation centers. Public recreation agencies essentially have an advantage in obtaining liability insurance because generally all city/school/county programs, from the county tax assessor to the recreation program, are handled together, resulting in lower insurance rates. Private agencies and individual camps, on the other hand, are rated individually and insurance rates tend to be somewhat higher.

STAFF COVERAGE. In all cases surveyed, paid staff voluntarily purchased their own personal liability coverage. Volunteers were urged to get their own insurance as well, because they do bear a degree of legal responsibility for persons under their supervision. (For additional information on insuring volunteers see page 8.)

TRANSPORTATION CONSIDERATIONS. Governmental immunity does not necessarily apply to incidents involving cars and buses owned by the school or public recreation agency. In general, survey respondents from public agencies had Blanket of Fleet insurance to cover drivers of vehicles, with individual vehicles being insured by their owners--i.e., the county covers county-owned vehicles; the city covers city-owned vehicles; an agency covers an agency-owned vehicle; and an owner insures his/her own vehicle. For additional protection all drivers were required by agencies surveyed to be self-insured and show proof of insurance. One private recreation agency indicated that the same insurance agency providing the center with liability insurance also insured all their vehicles, protecting the center whether drivers were at fault or not. The key to protection from claims involving transportation vehicles, based on agency and insurance company responses, is to be sure that (1) all vehicles owned by the agency or used in transporting participants are insured, and (2) all drivers of vehicles are insured. Never assume that an agency's insurance policy covers an employee driver--check before letting the employee drive!

PROGRAMS CONDUCTED IN DIFFERENT SETTINGS. No special clauses were required in liability insurance policies of survey respondents to cover activities conducted in varying settings. One county recreation department was urged to schedule all trips through a reputable travel agency, but no other special measures were required.

INSURANCE RATES. Experts say that programs including impaired, disabled, and handicapped persons are not automatically considered high risks, and therefore rates for this type of coverage are not automatically higher. In fact, many underwriters state that handicapped participants, even in activities such as

canoeing, skiing, and wilderness camping, are better supervised or prepared and thus safer from hazards than the general population. This was generally the experience of recreation programs surveyed by AAHPER/IRUC, and only one program--a private recreation program for disabled persons--stated that insurance rates were higher for programs involving handicapped participants. Another private recreation program for handicapped persons found that rates were higher when high risk activities were a part of the program. However, in general the vast majority of programs felt that insurance rates did not vary when handicapped people were included in the program, despite the type of activity, age of participants, or severity of their conditions. In fact, according to two insurance companies, it would not be necessary to notify the insurance company if an already-insured program begins to include handicapped participants, and another company stated that only "... significant changes ..." in program or participants need be communicated to the insurer. (Check with your own company on this point.)

Choosing A Liability Insurance Policy--You Look At The Company

Personal liability policies for professional people generally provide for the following:

- Payment of damages when negligent services result in injury, sickness, disease, or death.
- Payment of damages because of damage, loss, or destruction of property.
- Payment of bail bond premium.
- Payment of any other amounts that the individual becomes legally obligated to pay, including reimbursement of defense attorney's fees.
- Defense of any civil suit seeking payment for injury, sickness, disease, or property damage, even if the suit is groundless. Be sure this clause is in the policy.
- Reimbursement to the insured for any expenses made for immediate medical and surgical treatment of the injured person.
- Reimbursement for expenses (except lost wages) contracted at the request of the insurance company.

Individuals should never accept a liability insurance policy that allows the insurance company to ". . . investigate, negotiate, and settle any claims or suits as it deems expedient . . ." This would mean that the individual might unknowingly accept a settlement--including admissions of liability--that had not been proven in a court of law.

Some typical exclusions from a liability policy are:

-- claims arising out of the use of vehicles, whether or not the vehicle is owned by the insured

-- claims payable under workmen's compensation

-- claims arising out of infliction of corporal punishment

Public funds in some cases may not be used to purchase liability insurance for employees. In about twenty states school boards are authorized to purchase liability insurance to protect employees. In states where public funds cannot be used, the city or county can often arrange group coverage paid for by employees, which is less expensive than each individual getting his/her own insurance. In some instances employees can add professional liability coverage to their homeowner's liability policies.

## Choosing A Liability Insurance Policy--The Company Looks At You

Insurance companies listed on the remaining pages of this report are companies that have been known to insure recreation, sports, and related programs (and employees of programs) involving handicapped participants. When determining if they will insure a program or how they will rate a program for purposes of calculating insurance costs, companies typically look at: (1) type of program, (2) severity of conditions of persons participating, and (3) qualifications and experience of people running the program. Although the listed companies do insure programs involving impaired, disabled, and handicapped participants, they will not insure all such programs. The main reason for this, according to the National Association of Independent Insurers, is that companies writing this type of business are typically small with limited resources and slim margin for error in their judgement; therefore, each risk must be individually considered and rated.

Often liability insurance for programs involving handicapped individuals is written in the so-called residual market. This consists of companies that write unusual risks at higher than standard rates. Programs for handicapped people do not have to be seen as higher risks, however, and they can be insured through the same insurance companies that insure programs for non-handicapped individuals. Before becoming resigned to the erroneous notion that the residual market is the only place to look for liability insurance, consider the following positive trends and bring them to the attention of insurance companies:

- Flight Insurance. Blind passengers traveling on commercial airlines can now purchase as much flight insurance as sighted passengers--and at the same rates. September 14, 1976, Tele-Trip Company, a subsidiary of Mutual of Omaha, changed its policy of allowing blind air travelers a maximum of $225,000 flight insurance while sighted passengers could get up to $375,000 coverage. Tele-Trip operates insurance outlets in most major airports in North America as well as providing travel insurance through many travel agencies.

- Automobile Insurance. Over 300 hearing impaired drivers are now insured by Marsh & McLennan, Inc. (222 South Riverside Plaza, Chicago, Illinois 60606). The company's experience with deaf drivers compares favorably to that with hearing drivers. In fact, their

statistics show that deaf drivers have a more favorable loss ratio than hearing drivers because driving is primarily visual.

- Life Insurance. Mentally retarded citizens now have at least two sources of life insurance. The National Association for Retarded Citizens (NARC) offers a policy underwritten by the Life Insurance Company of North America; all NARC members and dependents ages two to thirty-nine can enroll and are insured up to age fifty-one (NARC, 2709 Avenue E East, P.O. Box 6109, Arlington, Texas 76011). Commercial State Life Insurance Company (100 North Jefferson, St. Louis, Missouri 63103) also underwrites a policy for mentally retarded individuals from birth to age fifty-five; no health questions are asked and no medical exam is required. Persons with epilepsy are eligible for life insurance under the Epilepsy Foundation of America's Group Life Plan, underwritten by the Government Employees Life Insurance Company (GELICO). Introduced in 1975, the plan offers up to $25,000 of term insurance to EFA members ages eighteen to twenty-nine at standard rates. (EFA, 1828 L Street, N.W., Washington, D.C. 20036.)

## Group Insurance Plans Through Organizations

Group liability insurance is always less expensive than obtaining insurance as an individual. Group rating of policies results in the premium charged to the group being less than the total of premiums that would be charged to individuals. In addition, group plans provide a market for poor risks--i.e., persons or programs otherwise unable to obtain insurance are sometimes able to get it through a group plan.

The following are the only group plans that we are aware of for physical education, sports, and recreation personnel and individuals in related areas. There are surely other plans in existence, and it would be greatly appreciated if individuals having knowledge of other plans would send AAHPER/IRUC the information.

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| American Alliance for Health, Physical Education, and Recreation (AAHPER)<br>1201 16th Street, N.W.<br>Washington, D.C. 20036 | Plan covers professional and student members of AAHPER for up to $300,000 coverage per occurrence. Policy is underwritten by Centennial Insurance Company; administered bu Frank B. Hall & Co., 88 Pine Street, New York, N.Y. 10005. |
| National Recreation and Park Association<br>1601 North Kent Street<br>Arlington, Virginia 22209 | Plan for members; information was not received by the time this report was prepared. |
| Professional Skaters Guild of America<br>P.O. Box 80<br>Elma, New York 14059 | Covers members of PSGA for up to $1,300,000 per occurrence. Underwritten by the Hartford Insurance Company. |

North American Riding for the
Handicapped Association, Inc.
c/o Mrs. Lida L. McCowan, President
Cheff Center for the Handicapped
Augusta, Michigan 49012

This is an insurance program for riding centers, not for individuals, covering general center activities, non-owned automobiles, and accidents. Policy is underwritten by the Hartford Insurance Company and administered by Leybourne, Olsen, Anderson Associates, Muskegon Federal Savings and Loan Bldg., 3145 Henry Street, Muskegon, Michigan 49443.

Insurance Companies Providing Liability Insurance To Programs Involving Handicapped Individuals

Insurance companies that provide potential markets for liability coverage for physical education, recreation, and sports personnel and programs involving impaired, disabled, and handicapped persons include:

Western World Insurance Company, Inc.
P.O. Box 504
50 South Franklin Turnpike
Ramsey, New York 07960

American Home Assurance Company
102 Maiden Lane
New York, New York 10005

Jefferson Insurance Company of New York
One Park Avenue
New York, New York 10016

Northwestern Fire Insurance Company of Pennsylvania
8049 West Chester Pike
Havertown, Pennsylvania 19083

Look in the Yellow Pages for agents or agencies that represent these companies or write to the companies and they will indicate agents in your area. As indicated on page five, these companies will not insure all programs; they have a slim margin for error in judgement and therefore must rate all risks on an individual basis.

Other insurance companies that present possibilities for insuring recreation, sports, physical education, and related programs involving handicapped persons are: Commercial Union Assurance Companies (Boston, Massachusetts); Commercial Standard Insurance Company; Insurance Company of North America; The Travelers (Hartford, Connecticut); Lloyd's of London; and Nationwide Insurance (Columbus, Ohio). Again, check your local directory to find agents in your geographical area.

## Insurance For Volunteers

Volunteers are usually covered under a program's liabilility insurance policy if they are under the direct supervision of an authorized paid employee. However, they do bear a degree of legal responsibility for those persons under their supervision and should carry their own comprehensive liability insurance. Two agencies that provide insurance for volunteers are:

VIS Insurance Plan
Central Agency
Volunteer Service Association
Division of Corporate Insurance Management
Washington, D.C. (complete address not available)
(202) 244-5678

Group Insurance for Volunteers
Central Agency
GIV of Alexandria, Virginia
(complete address not available)
(703) 751-8886

## A Final Word

Liability insurance is very important for any physical education, recreation, and sports program, and personnel working in these programs should also have good insurance coverage. However, liability insurance is no substitute for safety. Good staff and volunteer training, competent supervision of personnel, and regular inspections of equipment, facilities, and activities are a must. All accidents, no matter how trivial, should be reported and investigated to prevent more serious tragedies later. Safe, prudent conduct is the best form of insurance.